IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5599 of 2005

Praveen Kale Petitioner

Vs.

State of Maharashtra & ors. Respondents

Ms.Ushajee Peri h/f. Mr.Mihir Desai for petitioner.
Mrs.M.P.Thakur, AGP for Resp.no.1.
Mr.Rui Rodrigues for Resp.no.2.
Mr.Uday Warunjikar for Resp.no.3.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 18, 2006.

P.C.

1. Heard Ms.Usha Peri with Mr.Mihir Desai, the learned counsel for the petitioner and Mr.Warunjikar, the learned counsel for the respondent No.3, Mr.Rodrigues for the respondent no.2 and Mrs.Thakur, the learned AGP for the respondent no.1.

2. The petitioner is aggrieved by the office order dated 29/4/2005 discharging him from service with effect from 1/4/2005 (last working day of the agreement period). It appears that the petitioner came to be appointed as a Lecturer on temporary contract basis from October 2003 for a fixed tenure

of six months and on a consolidated salary of Rs.12,000/- per month. Another appointment order dated 1/4/2004 was issued in favour of the petitioner for the period of next six months i.e. from 6/4/2004 to 30/9/2004 on the same salary and the same terms and conditions. The third appointment order dated 11/10/2004 was issued for another six months with the same salary and same conditions. The petitioner had approached this Court in Writ Petition No.1316 of 2005 praying for directions to give him all the benefits of permanency and to pay arrears of salary from 1/10/2003 as per the UGC Scales. This Court disposed off the petition on 14th March 2005 by noting that the petitioner had submitted a representation on 24/11/2004 for the same relief and the respondent no.3 was directed to decide the said representation within six months. By the impugned order his third tenure from 11/10/2004 to 10/4/2005 was brought to an end but with effect from 1/4/2005. In the mean while the representation was rejected by the respondent - University on the grounds that Statute no.11 framed by the University permits fixed tenure appointments on consolidated salary and these fixed tenures can be extended for a period of two years and in a specific case not more than for a

period of three years. It was further pointed out that all the conditions of temporary appointment were made known to the petitioner and he had accepted the same. During these tenures of initial two appointments he did not raise any grievance. It was further pointed out that regular appointments can be made to the posts which have been sanctioned by the Government and such posts can be filled in on the approval of the Government.

3. While challenging the impugned termination order the petitioner prays for the very same relief viz. directions for his permanent appointment.

4. The Respondent no.2 - University is established under the Yashwantrao Chavan Maharashtra Open University Act, 1989 and it has framed its Statutes. Statute no.11 prescribes the procedure for selection of teachers whereas Statute no.12 provides for special mode of appointment by invitation. Statute no.13 provides for special mode of appointment on tenure and it reads as under:

"The Board of Management may appoint a person selected in accordance with the procedure laid

down in the Statutes 11 and 12 for a fixed tenure, on such terms and conditions as it may deem fit."

Statute no.11 has been subsequently amended and it has been titled as "The appointment of persons on Fixed Tenure Contract Basis in the University 1993". There is no dispute that the petitioner's appointment was as per Statute no.11 and under the amended Statute some of the following provisions which are relevant need to be considered:

"5.4. The period of contract shall, at a time, be of not less than six months and not more than two years, extendible upto one more year with the prior approval of the Board of Management.

5.5 Every person appointed on Fixed-tenure contract basis shall perform such duties and functions or attend to such assignments as may be prescribed by the Vice Chancellor from time to time.

5.6. The person appointed on fixed tenure

contract basis shall sign an agreement with the University in the prescribed proforma, and shall be bound by the terms and conditions mentioned therein.

5.7. Persons appointed on fixed tenure contract basis shall be paid a total consolidate salary to be fixed by the Board of Management in each case. He / she shall not be eligible to claim any other allowances. However such total consolidated fixed salary shall not exceed the sum of pay and allowances admissible to a permanent employee holding an analogous post and drawing a basic pay at the maximum of his scale of pay.

5.11 The contract appointment can be terminated by either party without assigning any reason by giving one month's notice in writing, or by payment of an amount equal to one month's consolidated salary drawn by him / her in lieu of the notice."

5. After having heard the learned counsel for the petitioner and considered the scheme of Statute no.11

as amended, we are satisfied that the petitioner went through the selection process, he was issued an appointment order on fixed tenure basis and on consolidated salary, the appointment was extended for a total period of one and half years and on expiry of the third tenure of such contractual appointment the impugned order has been issued. The relief of permanency cannot be considered in a writ petition under Article 226 of the Constitution when the petitioner was not appointed on probation at any time against a regular post available as per the approval granted by the Government of Maharashtra or any other competent authority. The petitioner having accepted the contractual appointment, it was not permissible for him to approach us seeking a writ of mandamus to make him permanent in the employment of the University more so when Statute no.11 empowers the University to appoint teachers on contract basis for a specific tenure of six months or more.

6. We, therefore, do not find any reason to entertain this petition and it must fail at the threshold. The same is hereby rejected summarily. However, we make it clear that the impugned order will be effective from 10/4/2005 and not from

1/4/2005 and in case the petitioner has actually worked from 1/4/2005 to 29/4/2005, he shall be paid the consolidated salary of Rs.12,000/- for the said period by the University.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE